

FIRSTLAND OFFSHORE EXPLORATION CO.

IBLA 97-65

Decided June 4, 1999

Appeal from a Minerals Management Service decision which denied an appeal from a decision that terminated a suspension of production which the Minerals Management Service had previously granted to working interest owners of two oil and gas leases. MMS-95-0012-OPS.

Affirmed; motion to strike denied; request for discovery denied; request for oral argument denied; request for time to reply to Gravlee's Response denied as moot.

1. Rules of Practice: Appeals: Standing to Appeal

In order for an individual or organization to establish standing to appeal under 43 C.F.R. § 4.410, the individual or organization must show that he is a party to the case and that a legally cognizable interest has been adversely affected by the decision being appealed. An assignee pursuant to an unapproved assignment has standing as a successor-in-interest to appeal decisions adverse to its interests.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

A termination of suspension of an Outer Continental Shelf oil and gas lease will be affirmed on appeal where the party seeking to restore the suspension is not the designated operator, the designated operator has advised MMS that it does not intend to produce the lease, and the rationale for termination of the lease meets the criteria of 30 C.F.R. § 250.10(j).

APPEARANCES: Michael A. Littman, Esq., Wheat Ridge, Colorado, for Firstland Offshore Exploration Company; Jerry E. Rothrock, Esq., Jim C. Langdon, Jr., Akin, Gump, Strauss, Hauer & Feld, L.L.P., Washington, D.C. and Howard M. Rubinstein, Esq., Houston, Texas, for Gravlee & Associates, Inc.; Howard Chalker, Esq., Geoffrey Heath, Esq., and Sarah L. Inderbitzen, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Firstland Offshore Exploration Company (Firstland or Appellant) has appealed from a September 13, 1996, Decision (1996 Decision) by the Acting Associate Director (AAD) for Policy and Management Improvement, Minerals Management Service (MMS or Respondent) denying its appeal of a September 22, 1994, Decision (1994 Decision) issued by the Acting Regional Director, Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region, MMS. The letter decision terminated the suspension of production (SOP) for Leases OCS-G 5054 and 5055, Main Pass Blocks 253 and 254, which had issued on June 14, 1994. Firstland acquired a 10-percent working interest in the two leases on July 27, 1992, and is one of nine co-lessees affected by the 1994 Decision. 1/ Firstland is the only interest holder to appeal that decision.

The factual predicate to this appeal is carefully set forth in the 1996 Decision and is quoted here, in pertinent part:

Leases OSC-G 5054 and 5055, were acquired jointly by Chevron U.S.A. Inc. (Chevron) and Shell Oil Company (Shell) in 1967. Shell drilled, and plugged and abandoned, six wells on OSC-G 5054 with Well No. 6 qualifying as capable of producing in paying quantities in June 1972. Chevron drilled, and plugged and abandoned, four wells on OCS-G 5055 with Well No. 3 qualifying as a well capable of producing in paying quantities in March 1973. Chevron installed a platform in 1975 and then drilled, and plugged and abandoned, three more wells. Both leases expired in 1978 with no production. * * *

Chevron reacquired both leases in 1982 and recertified the qualifying wells on the leases. The leases were scheduled to expire according to their primary terms on March 31, 1987. Both leases were farmed out to Hughes-Denny Offshore Exploration (Hughes-Denny). On March 13, 1987, with concurrence from Chevron, Hughes-Denny requested an SOP for both leases. Hughes-Denny proposed to drill and produce three wells from the existing platform. Hughes-Denny wanted to test the wells prior to installing a pipeline since the "life of the reserves of this prospect are questionable." Oil produced was to be barged, and the gas was to be flared. Production was to commence in April 1988. On March 20, 1987, the MMS approved the SOP for both leases through April 30, 1988.

1/ The nine co-lessees in the two leases are: HEP/Unocal; Continental Land and Fur Co., Inc.; Denny Offshore Exploration, Inc.; Aberdeen American Petroleum Company Inc.; Walker Exploration Company; Princeton Energy Group II Limited Partnership; Wheatley Natural Gas, Inc.; Day Exploration, Inc.; and the Appellant, Firstland.

Hughes-Denny requested and received SOP extensions through August 31, 1988, due to a decision to install facilities on the platform rather than on a jack-up rig. Hughes-Denny requested and received a 3-month SOP for Lease OCS-G 5054 to provide time for approval of its request to flare gas. Production on this lease began in September 1988 and ceased in October 1988. Production began from Lease OCS-G 5055 in August 1988 and ceased in November 1988. Total time on production was 20 days for Lease OCS-G 5054 with produced volumes of 2.32 MBO and 32.54 MMCF. Lease OCS-G 5055 was in production for 84 days with produced volumes of 42.16 MBO and 275.78 MMCF. Production from these two leases has never been renewed.

On January 12, 1989, the MMS approved an SOP for both leases through June 30, 1989. Hughes Eastern Petroleum, Inc. (Hughes Eastern), previously Hughes-Denny, stated in their request that they had expected oil production rather than gas and planned to modify production facilities, install a pipeline, and drill six additional wells (one on Lease OCS-G 5054 and five on Lease OCS-G 5055).

On June 22, 1989, the MMS approved an SOP through June 30, 1990, since the pipeline proposed for the subject leases was included in the Federal Regulatory Commission's (FERC) review process for pipelines in the Mobile Bay Area. The MMS approved additional suspension extensions for delays in the FERC pipeline review on June 5, 1990, January 30, 1991, July 26, 1991, February 10, 1993, July 26, 1993, December 27, 1993, and June 14, 1994.

During 1990, the lease operator (Hughes Eastern) was merged into Union Oil Company of California (Union). This merger resulted from Union's stock acquisition of Prairie Holding Company, the parent corporation of Hughes Eastern. Unocal Corporation (Unocal), a Union subsidiary, became the designated operator of the leases.

When Unocal was designated as operator, and continuing to the present time, it was the only co-lessee approved by the MMS to conduct drilling activities on the OCS. The other eight (8) co-lessees in the two leases are: Continental Land and Fur Co., Inc.; Denny Offshore Exploration, Inc.; Aberdeen American Petroleum Company Inc.; Walker Exploration Company; Princeton Energy Group II Limited Partnership; Wheatley Natural Gas, Inc.; Day Exploration, Inc.; and the Appellant, FOEC.

In a letter dated October 29, 1993, FOEC requested, among other things, that MMS not allow Unocal to remove the platform without the consent of all the joint owners. In a telephone

conversation on November 10, 1993, Unocal informed the GOM that it was considering allowing the SOP to expire, but might request additional suspensions. In December 1993, Unocal did request and was granted suspension extensions through June 30, 1994, since a FERC-approved pipeline continued to be delayed. Unocal further stated that in an effort to produce the gas and possibly develop the field, it was currently looking at options with other operators. In June 1994, citing the same reasons, Unocal requested and was granted suspension extensions through December 31, 1994.

An oil spill from the Main Pass Block 254 Platform A (Lease OSC-G 5055) occurred on September 2, 1994, and was reported to the U.S. Coast Guard. Clean Gulf Associates was notified, and all oil spill contingencies were put into operation. Subsequent inspection of the platform found liquid hydrocarbons in two 10,000-barrel tanks. This was determined to be the source of the spilled hydrocarbons.

On September 13, 1994, representatives from Unocal met with GOM to discuss: a) the recent oil spill that occurred at the Main Pass Block 254 Platform A; b) Unocal's progress toward clean-up; c) the condition of the platform; and d) Unocal's future plans for Leases OSC-G 5054 and 5055. Unocal stated that it did not intend to bring these leases on production. Unocal also stated that given the condition of the platform, there were insufficient reserves to make the project economical. Unocal further stated that it had requested lease suspensions because some of the lessees still expressed an interest in developing the leases.

By letter dated September 13, 1994, the MMS issued to Unocal a Notice of Incidents of Non-Compliance Detected and Actions Taken resulting from the oil spill and subsequent on-site inspections of Main Pass Block 254 Platform A. In addition to the spill, Unocal was cited for deteriorated grating on the boat landing; solid production deck rusted through; missing steps on stairs; missing handrails; no site security for this unmanned platform; missing and vandalized equipment; no water or chemical fire protection system; inoperable pump and drain system; and corrosion on vessels, valves and fittings sufficient to cause leakage or failure to operate properly.

By letter dated September 14, 1994, Unocal stated that "after careful review of our in-house data and the recent activities that have occurred on the blocks, Unocal as operator, has made a decision not to participate in any further operations on the blocks unless it involves the abandonment of the wells and platform." Unocal requested that the MMS allow the SOP to remain in place until its December 31, 1994, expiration date in order to give FOEC an opportunity to arrange for approval of a new designated operator.

In a letter to Unocal dated September 22, 1994, the GOM terminated the SOP for Leases OSC-G 5054 and 5055, effective September 23, 1994, "[s]ince the circumstances which justified the granting of these suspensions no longer exist." The letter further explained that "[t]hese suspensions were granted based upon the commitment to bringing the proven reserves on production pending access to a gas pipeline." Unocal, in both its letter of September 14, 1994, and its statements at the September 13, 1994, meeting with MMS, stressed that it had no intention of bringing the leases on production. Pursuant to the applicable statute and regulations, the termination of the suspensions of production for the subject leases also resulted in the simultaneous expiration of the leases by operation of law.

(1996 Decision at 1-6.)

In denying the appeal of the 1994 Decision terminating the SOP, the AAD found that the facts in this case required the Regional Director to terminate the previously approved SOP for lack of leasehold activity; and that the SOP termination was justified under the regulations. (1996 Decision at 17.)

In its Notice of Appeal (NOA), Appellant urges that, based upon the reservoir information provided and the production/refurbishing plan it has set forth, it has adequately met the requirements of 30 C.F.R. Part 290 which require a showing of sufficient reserves and a production plan to justify a reversal of the Termination of Suspension of Production. (NOA at 12.) Appellant urges that reversal of the termination decision is warranted because: (1) Hughes Eastern (HEP) and Unocal will no longer be involved; (2) Appellant is ready, and has always stood ready, to proceed with an active development program; (3) Appellant and the other working interest holders who wish to participate should not be penalized for the negligent maintenance of the platform by Unocal; (4) the Department and the MMS both have an interest and a duty to see oil and gas produced; and (5) Appellant has demonstrated that significant producible reserve potential exists on the lease blocks. (NOA at 12.)

Appellant argues that the AAD used "flawed logic and unsound principles in reaching his conclusion." (NOA at 12.) Firstland further claims that the underlying Regional Director's 1994 Decision was based on incorrect information. (NOA at 13.) Appellant explains that the incorrect information relied upon included the fact that Unocal was not the designated operator, as found. Unocal was not the agent for Firstland, Appellant claims, under any agreement. Second, the Joint Operating Agreement (JOA) prohibited abandonment without consent of a majority of interest holders. Third, Appellant argues that Firstland as an interest holder had notified MMS in writing on October 29, 1993, that it wished to proceed with a development plan. (NOA at 13.)

Appellant further claims that the JOA, as approved by MMS, does not give the designated operator the right to abandon. Since the JOA is filed with MMS, Firstland claims, MMS could not rely upon verbal statements by a Unocal employee as binding the participants under the JOA to an abandonment determination. (NOA at 13.) Equally important, Appellant claims, the determination that the platform was not maintained after repeated warning is incorrect. Firstland states:

MMS had inspected the platform on June 3, 1994, and all maintenance deficiencies had been corrected by June 12, 1994 to MMS satisfaction. An SOP extension was granted by MMS June 14, 1994, without any further mention of maintenance deficiencies. How can the Acting Associate Director ignore his own agency's actions less than 77 days prior.

(NOA at 14.)

Appellant also assails the AAD's statement in the 1996 Decision that "other co-lessees do not support the * * * optimistic potential as to the production potential for these leases." Appellant claims that this is an assumption without foundation, and that "Denny and Day and Firstland all believe in the production potential." (NOA at 14.) Appellant states: "The conclusion of the Acting Associate Director is unfortunately based upon compounded errors, omissions of pertinent facts, and erroneously held beliefs and assumptions by MMS Staff." Id.

In its Answer, Respondent states that MMS properly terminated the leases under 30 C.F.R. § 250.10(j)(1995). MMS claims that Firstland ignores the applicable regulations and MMS' discretionary authority to terminate suspensions. Respondent quotes § 250.10(j)(1995), which states:

Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

(Answer at 4-5.) MMS argues that the underlying 1994 Decision terminating the leases met these requirements because it determined that the circumstances which justified the granting of the suspensions no longer exist because they were granted based upon the commitment to bring the proven reserves on production pending access to a gas pipeline. (Answer at 5.) Second, MMS states that the termination decision cited specific reasons for that termination; i.e., the platform's condition "clearly shows a lack of diligence in maintaining the facilities while awaiting a pipeline" and "it is unlikely that sufficient reserves exist to warrant platform repair." Id. Finally, MMS claims, the 1994 Decision stated that termination was effective September 23, 1994. Therefore, Respondent claims, the termination of suspension was a proper exercise of MMS' discretionary authority.

Respondent further claims that Firstland's wish to develop the leases now is not sufficient to warrant reversal of MMS' termination decision. Respondent states that Firstland's presumption--that if it demonstrates that it is committed to developing the leases now, this will cure its failure to demonstrate its commitment at the time the termination occurred is incorrect. (Answer at 6.) Respondent claims that the reasons stated for termination did exist at the time the 1994 Decision was issued, and despite Appellant's representations that it is now ready, willing, and able to develop the leases, these statements are misleading and illusory. (Answer at 7.) For example, Respondent claims that to develop the leases, Firstland will have to (1) replace Unocal as operator because Unocal is not interested in developing the leases, (2) receive MMS approval of the new operator, (3) secure new working interest owners willing to fund development of the leases, (4) receive MMS approval of reassignment of the working interests, (5) get adequate bonding in place, (6) get access to a pipeline, (7) repair the platform, and (8) prevail in ongoing Federal litigation over whether working interest owners in default to the designated operator may vote on changes in the working arrangements. (Answer at 7.) Respondent states that even if Firstland can demonstrate that it is willing and able to develop the leases now and in the future, it was not at the time MMS issued the 1994 Decision. Id.

Equally important, Respondent claims, Firstland, as a lessee, was ultimately responsible for compliance with lease terms and regulations. (Answer at 8.) Firstland's attempts to avoid its duty to comply with the law by blaming Unocal or the financial condition of other working interest owners is misplaced, Respondent states. (Answer at 9.) Respondent cites section 10 of Appellant's lease, titled "Performance," which states that "[t]he Lessee shall comply with all regulations and orders relating to exploration, development, and production." Id. Moreover, Respondent claims, MMS regulations provide that "in the event of a controversy between the lessee and the designated operator, both the lessee and the operator will be required to protect the interests of the lessor." Id.

Further, Respondent states, it is well established that even though "[a] lessee may designate an operator to act for the lessee in matters related to lease operations, [it] does not relieve the lessee from ultimate responsibility for compliance with the lease terms." (Answer at 10 (emphasis in Answer), quoting Jerry Chambers Exploration Co., 107 IBLA 161, 163 (1989).) Accordingly, Respondent claims, an "operator's neglect does not relieve [the lessee] from ultimate responsibility for compliance with lease terms and regulations." Id., quoting Anadarko Petroleum Co., 122 IBLA 141, 150 (1992). Therefore, Respondent argues, the AAD correctly concluded in the 1996 Decision that even if Firstland's operator was negligent in maintaining the platform, "[Firstland] and other co-lessees are still responsible for the action, or lack of action, taken by the designated operator." Id., quoting from 1996 Decision at 15.

Respondent urges that MMS should not be forced to continue an SOP on a lease with questionable reserves, continuing disputes among the

interest owners over whether to abandon and plug and who should bear those costs, and an operator which Firstland does not have the votes to remove who wishes to abandon, not produce, the leases. (Answer at 11.)

Respondent also states that Firstland's claim, made for the first time before the Board, that Unocal was not the designated operator, is irrelevant. (Answer at 11.) Respondent claims that if, as Firstland alleges, Unocal had controlling interest under the JOA, and could not be removed by the other interest owners, then MMS correctly relied on Unocal's statements that it intended to cease operations. Id. Respondent states that through corporate acquisition, HEP, the designated operator, became Unocal. In fact, Respondent claims, HEP, through Unocal, continued to operate as designated operator after acquisition, and continued to send correspondence on HEP letterhead. (Answer at 13.) Respondent argues that neither the fact that Unocal acquired HEP, nor the fact that corporate policy for the leases changed after the acquisition, acted to terminate HEP's designation as operator or made Unocal's actions with respect to the leases unauthorized "because HEP is Unocal." (Answer at 13.)

In the final analysis, Respondent states, even if the Board were to determine that Unocal was not the designated operator, it affords Firstland no relief because Firstland was responsible, as a lessee, for lease operations. Id. Equally important, Respondent claims, if Unocal was not the designated operator pursuant to 30 C.F.R. § 250.8 because it had not been designated in writing by the working interest holders, then it had no authority to request the SOP which Appellant argues should not have been terminated. Respondent urges that Firstland cannot have it both ways: claiming on the one hand that the suspension should not have been terminated, yet arguing that the interest holder that obtained the suspension in the first place had no authority to act. Id.

Appellant filed a Response to the MMS Answer (Response) with the Solicitor's Office, U.S. Department of the Interior, on August 4, 1997, which was not filed directly with the Board. Respondent provided a copy to the Board as an attachment to its pleading of April 20, 1998. The Response will be considered as if timely filed. Firstland submits in its response that it was not in the national interest, nor was the MMS action terminating the suspension valid and legal, for the following reasons:

1. Unocal will be replaced by a new operator, Matrix.
2. Matrix is operating 14 platforms in the Gulf of Mexico at the present time.
3. Encap will provide funding for development of leases.
4. Reassignment of working interest is being finalized at this time, by all working interest holders.
5. Bonding requirements will be met by the new operator, Matrix.

6. Tenneco has agreed to lay the necessary pipeline.
7. The platform has been refurbished by Unocal and inspected by MMS and/or Coast Guard.
8. All working Interest holders have agreed to the substitution of operators.

(Response at 1.) Furthermore, Appellant claims, Firstland's geologists and engineers have again reviewed logs and information concerning the wells drilled and have agreed that there is a commercially viable reserve of oil and gas. Id.

On November 12, 1997, Gravlee and Associates, Inc. (Gravlee), claiming to be the successor-in-interest to Firstland in this matter, filed its Response to Respondent's Answer (Gravlee Response) as well as a Request for Hearing and Request for Discovery. In its Response, Gravlee asserts that MMS' September 22, 1994, Order erroneously concludes that the conditions which justified the suspensions of production no longer exist; that MMS' September 22, 1994, Order fails to set forth any other lawful basis for terminating the suspensions of production for the Main Pass Leases; that the new theory of termination set forth in MMS' September 13, 1996, Decision does not constitute a lawful basis for terminating the suspensions; and that MMS' September 22, 1994, Order is arbitrary and capricious.

Respondent filed a Motion to Strike the Response (Motion) on February 9, 1998, in which it argued that Gravlee does not have standing as a party to file a response to MMS' Answer under 43 C.F.R. § 4.410(a), because it has not been "adversely affected" by a decision of MMS. (Motion at 5.) Moreover, Respondent claims, Gravlee cannot intervene under 43 C.F.R. §§ 4.410(c) or (d) because there has been no injury to Gravlee itself, the potential effect on Gravlee is remote and merely speculative, Gravlee raises no new arguments, and its intervention would only serve to increase the time and costs of this proceeding. Id.

In its Opposition to the Motion to Strike (Opposition), Gravlee claims that "MMS is simply wrong when it asserts that Gravlee must be either a 'party' or 'adversely affected' in order to file Firstland's response to MMS' Answer." (Opposition at 2.) Gravlee claims that because Firstland has authorized Gravlee to prosecute its appeal, Gravlee has every right to file Firstland's response to MMS' Answer and any other pleading that Firstland could file in this appeal. (Opposition at 2-3.) Because of the valuable property rights that Gravlee obtained from the interest owners under a June 1, 1997, Agreement (Ex. 51 to Gravlee Response), and because of the loss it would suffer if the appeal is denied, Gravlee argues that it has a legally cognizable interest that will be seriously and adversely affected by the outcome of this appeal and, as a result, Gravlee is entitled to appear in this case on its own behalf as it is the real party in interest in this case, even if Firstland's appeal is granted. (Opposition at 3.) In the alternative, Gravlee argues, this Board may properly accept the response that Gravlee filed on behalf of Firstland as an amicus brief. (Opposition at 4.)

In its Reply to Opposition (Reply), Respondent notes that, in addition to not being a party to the case, Gravlee obtained a mere contingency interest under the June 1, 1997, Agreement (Agreement) in the leases "if MMS' decision to terminate the Suspension of Production (SOP) that resulted in the expiration of the leases is reversed." (Reply at 1.)

In addition, Respondent states, Gravlee has agreed to undertake lease obligations only if the SOP or leases are reinstated. *Id.* Respondent argues that Gravlee got, then, at best, a possibility of a property interest if the leases are reinstated and if MMS approves an assignment of those leases. (Reply at 3, citing Agreement Recitals, para 4.) Respondent claims, therefore, that Gravlee simply does not own an interest in the leases and any possibility of its acquiring one cannot now occur. This is because the Agreement specifically provides that it expired by its own terms on November 30, 1997. (Reply at 4.) Thus, Respondent argues, the plain language of the Agreement makes clear that Gravlee no longer has even the possibility of acquiring an interest in the leases. (Reply at 4.) More importantly, Respondent claims, the Agreement also precludes Gravlee from prosecuting the appeal after November 30, 1997. (Reply at 6.)

Gravlee's Response to Respondent's Reply (Response to Reply) urges that MMS' Reply fails to establish that Firstland filed a response to MMS' Answer on July 30, 1997. Consequently, Gravlee argues, MMS' Reply fails to provide any lawful basis for striking from the record of this case the response to MMS' Answer that Gravlee filed on November 12, 1997, and MMS' Reply fails to demonstrate that Gravlee does not represent Firstland. (Response to Reply at 1, 4.)

[1] We have stated that for an appellant to have standing to appeal from a BLM decision under 43 C.F.R. § 4.410(a), the appellant must be a party to the case and have a legally cognizable interest that is adversely impacted by the decision on appeal. See Blue Mountains Biodiversity Project, 139 IBLA 258 (1997); Laser, Inc., 136 IBLA 271 (1996); Stanley Energy, Inc., 122 IBLA 118, 120 (1992); Storm Master Owners, 103 IBLA 162, 177 (1988). If either of these two requirements is absent, an appeal must be dismissed. See National Wildlife Federation v. BLM, 129 IBLA 124 (1994); see also Mark S. Altman, 93 IBLA 265, 266 (1986).

To be a "party to a case" a person must have actively participated in the decisionmaking process regarding the subject matter of the appeal. The Wilderness Society, 110 IBLA 67, 70 (1989); Utah Wilderness Association, 91 IBLA 124 (1986); see also Sharon Long, 83 IBLA 304, 307-08 (1984). The purpose of limiting standing to appeal to a party to the case is to afford an intelligent framework for administrative decisionmaking, based on the assumption that BLM will have had the benefit of such party's input in reaching its decision. See Utah Wilderness Association, *supra* at 128-29; California Association of Four wheel Drive Clubs, 30 IBLA 383, 385 (1977).

The concerns here are both whether Gravlee is a party to the case and whether it has been adversely affected by the challenged MMS action. While it is clear that Gravlee was neither a party to the case nor adversely

affected by the MMS decision at the time it issued (since it had no interest in the leases at the time), this is not dispositive of its standing to appear as a successor-in-interest to the lessees. It is well established in Board precedent that an assignee pursuant to an unapproved assignment has standing to appeal a decision adverse to its interests. Uno Broadcasting Corp., 120 IBLA 380, 382 (1991); Tenneco Oil Co., 63 IBLA 339, 341 (1982). In St. James Village, Inc., 139 IBLA 1 (1997), the Board cited this line of precedent in rejecting a challenge to the standing of a successor-in-interest to maintain an appeal from a BLM decision issued in response to a protest filed by its predecessor-in-interest. 139 IBLA at 2 n.1. Although the interest of Gravlee is a contingent one, Gravlee's interest would nevertheless be adversely affected if the Board were to uphold the MMS decision. Although we cannot accept Gravlee's assertion that Firstland can authorize a third party (other than an attorney authorized to appear under 43 C.F.R. § 1.3) to prosecute the appeal on its behalf, Gravlee has standing to appear in its own right as successor-in-interest to Appellant. Accordingly, the MMS motion to strike Gravlee's Answer is denied.

In its submission, Gravlee also requests the opportunity for discovery. MMS has objected to this request. Appeal procedures before the Board are governed generally by the regulations found at 43 C.F.R. Part 4, Subparts A, B, and E. The jurisdiction of the Board of Land Appeals extends to issuance of final decisions of Departmental officials relating to the use and disposition of the public lands and their resources, including the submerged lands of the OCS. 43 C.F.R. § 4.1(b)(3). These regulations make no provision for filing of discovery requests in appeals pending before this Board. We note, however, that when the record is inadequate to sustain the reasonableness of the agency action, the decision will be set aside and the case remanded to establish a record which will support the administrative decision. Shell Offshore, Inc., 113 IBLA 226, 97 I.D. 74 (1990). Thus, this Board has on occasion directed the supplementation of the administrative record or case file in order to obtain the records necessary to resolve the appeal in order to avoid unnecessary delays in resolution of cases. In the present case, no showing has been made that the requested documents constitute relevant records required for resolution of this case. Therefore, the request for discovery is denied.

Gravlee has also requested oral argument before the Board. Appeals to the Board of Land Appeals are ordinarily decided on the basis of the administrative record and the briefs of the parties on appeal. Wyoming Independent Producers Association, 133 IBLA 65, 89 (1995). Oral argument may be granted in the discretion of the Board where it appears that clarification of the issues on appeal would be aided by the opportunity to inquire further of counsel for the parties. See 43 C.F.R. § 4.25. Inasmuch as we believe that the record provides a more than adequate basis upon which to determine the issues presented, the request for oral argument is denied. Marathon Oil Co., 128 IBLA 168, 173 (1994).

Similarly, MMS has requested an opportunity to reply to Gravlee's Response. In this case, we find that request to be unnecessary. Respondent is on record as stating Gravlee's Response to MMS' Answer raises nothing new to the case before its submission. We agree. For this reason, we find no justification to permit additional submissions.

[2] We now turn to the substance of Firstland's appeal. As noted above, Firstland claims that Unocal could not properly act as designated operator and request termination of the suspension because HEP, its subsidiary, was the listed operator. The facts show, however, that HEP, and its parent company Unocal, were one and the same for purposes of acting upon the lease. This is reflected in the fact that Unocal totally owned HEP, and used HEP stationery to communicate with MMS although the documents were signed by a Unocal official. Equally important, Appellant and the other working interest owners accepted Unocal/HEP for all purposes as the operator, including when Unocal/HEP requested the last suspension on behalf of working interest owners in June 1994. Only Firstland has asserted before this Board that Unocal's acquisition of HEP has precluded this entity from properly acting as operator.

A termination of suspension of an OCS oil and gas lease will be affirmed on appeal where the designated operator has advised MMS that it does not intend to produce the lease. In all cases where operations are not conducted by an exclusive owner, a designation of operator is required.

30 C.F.R. § 250.8 (1995). The designation as operator "will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part." *Id.* Thus, HEP/Unocal, as designated operator, had the authority to exercise the rights of all parties to the agreement, and to cease movement toward production where supported by a majority of other working interest owners.

While Appellant now provides evidence of changed circumstances and new support for renewed efforts toward production in its pleading, the facts that existed at the time MMS made its decision must be considered in this appeal.

The notice of termination of the SOP in this case met the requirements of 30 C.F.R. § 250.10(j). That section states:

Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

After MMS discussions with Unocal/HEP in September 1994, as required by the regulations, in which the operator indicated that the projected

reserve, costs of upgrading the platform, and costs of installing a pipeline did not justify further expenditures directed toward bringing the leases to production, MMS determined that the SOP must be terminated. 30 C.F.R. § 250.10(j). MMS stated, in its September 22, 1994, Decision, that the circumstances justifying the suspension no longer existed. Furthermore, MMS specified reasons for the termination, and specified a termination date. In its 1994 Decision, MMS determined that "the circumstances which justified the granting of the[] suspensions no longer exist" because they "were granted based upon the commitment to bringing the proven reserves on production pending access to a gas pipeline." The reasons cited in the decision for the termination included "a lack of diligence in maintaining the facilities while awaiting a pipeline" and the determination that "it is unlikely that sufficient reserves exist to warrant platform repair." The termination decision stated that the termination was effective September 23, 1994. We find that the termination of suspension was a proper exercise of MMS' discretionary authority under 30 C.F.R. § 250.10(j). See Great Plains Petroleum, Inc., 117 IBLA 130, 132 (1990); Michael P. Grace, 50 IBLA 150, 151-52 (1980).

To the extent Appellant or Gravlee has raised other arguments in this case that have not been specifically discussed, they have been considered and rejected. See Glacier Two Medicine Alliance, 88 IBLA 133, 156 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 43 C.F.R. § 4.1, the decision appealed from is affirmed. Gravlee's motion for discovery and request for oral argument are denied. MMS' request to respond to Gravlee's Response is denied.

James P. Terry
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge